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OGC:LRH:jeb

4 June

comment

MEMORANDUM FOR: Director of Central Intelligence

SUBJECT : Definition of Atomic Energy "Restricted Data"
and its Relationship to Intelligence Information

1. The term "restricted data" was defined in the Atomic Energy Act of 1946 to be all data concerning the design, manufacture, or utilization of atomic weapons; production of special nuclear material; or the use of special nuclear material in the production of energy, unless declassified by the Atomic Energy Commission.

2. There has long been a difference of opinion between this Agency and the Atomic Energy Commission as to the impact of this definition on information pertaining to atomic energy matters. We have contended and believe our contention is compatible with the intent of Congress that the purpose of the act in surrounding "restricted data" with special precautions was to protect information arising within this country and susceptible to control by the imposition of legal restrictions in order to prevent access thereto by any foreign power without specific approval as provided in the act. The Atomic Energy Commission on the other hand has interpreted the statutory definition to apply to all information from whatever source as "restricted data" so long as it applies to atomic energy matters unless declassified by the Atomic Energy Commission. Under this definition, all information ^{ac} required by this Agency from foreign sources comes under the limitations imposed by law on "restricted data" unless specifically cleared by the Atomic Energy Commission. This

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would prohibit exchange between ourselves and foreign intelligence agencies of information relating to foreign atomic energy programs unless declassified by the Atomic Energy Commission. The Deputy Director (Intelligence) has stated that this restriction seriously impairs the acquisition of foreign intelligence information on foreign atomic developments which is deemed necessary for the national defense and security.

3. The matter has recently been under discussion as a result of a bill to amend the Atomic Energy Act of 1946 (Committee Print, May 21, 1954, H. R. 8862, S. 3323). In this bill the definition of "restricted data" is substantially the same as that in the earlier bill, starting off "The term 'restricted data' means all data etc." We suggested amending this to read "The term 'restricted data' means all United States data etc." The Atomic Energy Commission has refused to accept this change on the grounds that since they are, by interpretation, responsible for handling all information from whatever source as "restricted data," they could not comply with this responsibility if our change were adopted. We contend that since foreign intelligence information on atomic matters is not susceptible of control, it cannot be considered "restricted data" in the true sense. The Atomic Energy Commission's lawyers admitted that we are handicapped in our intelligence function by their interpretation of the law and state that they are willing to adopt a solution that will satisfy both sides. So far no agreement can be reached on wording to achieve this purpose.

4. The following solutions are presented for discussion:

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(a) A solution most satisfactory to the Central Intelligence Agency would be to have the Atomic Energy Commission reconsider its interpretation of the law to arrive at what we believe is the correct interpretation, namely, that "restricted data" can be construed to be only such information as arises in and remains under the control of the United States. We believe that such reconsideration is unlikely or if undertaken would result in a ^{reversal} ~~refusal~~ of the earlier definition.

(b) A solution along similar lines would be to present the question of interpreting the present wording of the statute to the Attorney General for an authoritative ruling controlling on the Executive Branch. The Atomic Energy Commission's lawyers say they are willing to refer the matter to the Attorney General. We have no knowledge of what prior consultation they may have had with the Attorney General on their present definition, but ^{it} would undoubtedly take compelling reasons to convince the Attorney General that he should overrule the Agency with substantive jurisdiction in the field, particularly in view of the close relationships between ^{at} ~~the~~ Agency and the Joint Committee on Atomic Energy.

(c) If interpretation is not feasible, we believe a solution satisfactory to CIA could be achieved by amending the statutory definition of "restricted data" to read, "The term 'restricted data' means all data determined by the Atomic Energy Commission to concern the design, manufacture, etc." This would require positive ~~trans~~action before the limitations would be imposed and would give us, with proper consultation with the Atomic Energy Commission, considerable freedom in handling foreign intelligence information. The

Deputy Director (Intelligence) informs us that this would meet their needs. The Atomic Energy Commission, while not stating that they are opposed to such a change, state that it would be opposed by the Department of Justice as it would greatly complicate the criminal prosecution of anyone violating the laws on disclosure of "restricted data." This problem includes highly technical questions of proof in which, of course, the Department of Justice is the final ^{arbiter} ~~arbitrator~~ for the Executive Branch, but in our opinion if put to the test the present language would require approximately the same elements of proof. However, objectively, no such amendment could be achieved without the approval of the Department of Justice.

(d) The Atomic Energy Commission's lawyers have suggested a special exemption for intelligence activities, but they have not committed the Commission itself to this wording. In effect, it would take the chapter of the act on control of information (Chapter 12) and in the General Provisions Section, SEC. 146., would add the following language: "The provisions of this chapter shall not be construed as restricting or limiting the gathering, correlation, evaluation, and communication of information concerning the atomic energy programs of other nations as authorized by the heads of the Government agencies performing intelligence activities." The Deputy Director (Intelligence) feels that insofar as this exemption conflicts with the Commission's interpretation of "restricted data," there is lack of clarity as to what precisely can be done with the information involved. Even ^{if} this wording were deemed acceptable by the Deputy Director (Intelligence), the query remains whether it would be advisable to subject such language to debate in the Congress with

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the possible consequential revelation of intelligence sources and methods.

LAWRENCE R. HOUSTON
General Counsel

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SEC. 146 GENERAL PROVISIONS. --

a. Sections 141, 142, 143, and 144 shall not exclude the applicable provisions of any other laws, except that no Government agency shall take any action under such other laws inconsistent with the provisions of this section. The provisions of this Chapter shall not be construed as restricting or limiting the gathering, correlation, evaluation, and communication of information concerning the atomic energy programs of other nations as authorized by the heads of Government agencies performing intelligence activities.